Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 183.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Plaintiff in Error,

vs.

LONZO C. GIBSON, as Comptroller of the State of Florida, and JOHN A. PEARCE, as Sheriff of Leon County, Defendants in Error.

BRIEF IN REPLY FOR DEFENDANTS IN ERROR.

WM. B. LAMAR,
Attorney General of Florida.
GEO. H. LAMAR,
Counsel for Defendants in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1900.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 183.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ALONZO C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY, DEFENDANTS IN ERROR.

BRIEF IN REPLY FOR DEFENDANTS IN ERROR.

STATEMENT.

Three bills for relief were brought by the plaintiff in error, in the circuit court of the second judicial circuit of Florida (original bill, supplemental bill in nature of bill of review, and bill of review) against an assessment of back and unpaid taxes on certain lines of its road for the years 1879, 1880, and 1881.

The original bill was disposed of, upon appeal, by the supreme court of Florida, by deciding all questions raised in said bill against plaintiff in error. The supplemental bill,

in nature of a bill of review, was dismissed on appeal by the supreme court of Florida, because brought in the lower court without its consent. And the bill of review was dismissed, on appeal, by the supreme court of Florida, merely upon a question of chancery practice.

These lines of road extend from Jacksonville to Chattahooche, from Fernandina to Cedar Keys, and from Waldo to Ocala, all in the State of Florida. The plaintiff in error here was not organized as a corporation and let into possession of these lines of railroad, liable to assessment and taxation for such years 1879, 1880, and 1881, until May 1, 1889. (See page 13 of brief for plaintiff in error, second paragraph.)

So it appears that the plaintiff in error took said properties with full knowledge of the intention of the legislature of the State of Florida to assess and collect these back and unpaid taxes upon said lines of railroad, and with the assessment for such years *impressed upon said lines of railroad.* The statute of the State of Florida is as follows (Laws of Florida, 1885, chapter 3558):

"An act to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment.

"The people of the State of Florida represented in senate and assembly do enact as follows:

"SECTION 1. That in all cases in which any railroad or the properties thereof belonging or appertaining in this State in the tax years commencing March 1, 1879, 1880 and 1881, or any of such years were not assessed for taxes for such years it shall be the duty of the controller to cause the same or so much thereof as were not assessed to be assessed for State and county taxes and twenty per centum of the taxes so assessed for said years and now unpaid, shall be collected at the same time the taxes for the year 1885 shall be assessed and collected and each year thereafter an additional twenty per cent. of said taxes shall be collected at the same time and in the same manner as the taxes for such year are collected, until the whole amount of said unpaid taxes for the years 1879, 1880 and 1881 are paid.

"The taxes to be assessed under this act shall be the same in amount as they would have been had they been assessed in such years, or any of them, as to which there was a failure to assess.

"Approved February 12, 1885."

The plaintiff in error cannot contend, with any degree of fairness, that it had no knowledge of the legislative intent, in the State of Florida, to subject these lines of roads to taxation. This statute was full notice to the plaintiff in error before it purchased said lines of railroad. These lines of railroad (*supra*) were assessed for taxation by the comptroller of Florida in accordance with the above statute, but plaintiff in error here seeks to defeat the State's claim for these back taxes upon the ground that it took, by purchase, the properties of the Florida Railway and Navigation Company, and that this company held these properties before the passage of the statute of 1885, which is set out above. But the Florida Railway and Navigation Company was organized on the 29th day of February, A. D. 1884. (See page 11 of brief for plaintiff in error, paragraph 3 thereof.)

The lines of railroad sought to be subjected to the collection of the taxes involved in these proceedings for the years 1879, 1880, and 1881 were constituent lines of road of said Florida Railway and Navigation Company, and said lines of railroad were originally built under the Internal Improvement Act of the State of Florida, and at the time of the organization of said Florida Railway and Navigation Company these constituent lines of railroad were liable to taxation under the laws of the State of Florida (Louisville and Nashville R. R. Co. *vs.* Palmez, 109 U. S. Reports, p. 244. See also Session Laws of Florida of 1879, secs. 45 and 46, chapter 3039), and the legislature of Florida, before such organization of the Florida Railway and Navigation Company, by joint resolution, had declared its belief in the liability to taxation of these lines of railroad, and by said resolution had directed the governor of the State of Florida

and the comptroller thereof to institute proceedings to test their liability to such taxation. Said joint resolution is as follows (Session Acts of Florida, A. D. 1881, page 217):

"*Joint resolution requiring the governor and comptroller to institute legal proceedings against all railroad companies who have refused to pay taxes on their railroad property for the collection of taxes.*

"Whereas there are several railroad companies in this State operating between four and five hundred miles of road at the estimated value of $5,000,000; and whereas, said railroad companies refuse to pay taxes on the said railroad property, claiming said roads are exempt from taxation under the provisions of the act commonly called the internal improvement act of 1855; and whereas, it is believed by lawyers whose opinions are entitled to respect, that the guarantee given as to taxation under that act only extended the exemption from taxation to the original companies owning said roads and did not pass with the roads into the hands of the present owners:

"Therefore, the people of the State of Florida represented in senate and assembly do resolve as follows:

"SECTION 1. That the governor and comptroller be, and they are hereby required to institute legal proceedings against said railroad companies who have refused to pay taxes on their railroad property, and test the validity of the claims of said companies of their exemption from taxation and, if necessary, to take the case to the highest courts of the land.

"SECTION 2. The governor and comptroller are hereby authorized to employ counsel other than the attorney general, to prosecute said legal proceedings, whose compensation other than necessary expenses shall be contingent upon and paid out of the money which may and shall be realized whether by State or counties from taxes now and to become due for the year 1881 as the result and consequences of the labor and services of such counsel. The said compensation not to exceed 15 % of the amount so collected.

"SECTION 3. That the governor and comptroller shall also take steps to inquire whether or not any railroads in this State claiming exemption from taxation aforesaid are exercising a franchise of public carriers without authority of

law, and if it be found that any such railroad or railroads are so unlawfully exercising such franchise, then, in that case, the governor and comptroller shall institute the proper proceedings at law or in equity to restrain and prevent such unlawful exercise of such franchise by such railroad or railroads unless such railroad or railroads shall agree to hereafter waive its or their claim to exemption from taxation.

"SECTION 4. The sum of $1,000 is hereby appropriated to pay the expenses of said suits and the controller is hereby authorized to draw his warrant in such sums as may be required for the same.

"Approved March 4, 1881."

The Florida Railway and Navigation Company and its organization in February, 1884, took these lines of railroad subject to this public notice and official declaration of the taxing power of the State of Florida that these lines of railroad which had heretofore escaped taxation should be subjected to taxation. Besides, it is not correct, as stated in the brief for plaintiff in error, on page 37 thereof, that—

"Under the laws of the State then in force, taxes could only be assessed against such properties as had been omitted from assessment for the three years next preceding the date of levying the assessment."

On the contrary, there was no such law in the State of Florida as alleged above that in any way limited the right of the State of Florida to pass a law taxing these lines of railroad for the years 1879, 1880, and 1881, in which they escaped assessment and taxation. The only provision of law existing at that time with reference to any limitation as to assessment of taxes related to *the power of the tax assessors* of the various counties in the State of Florida *to assess lands* in their counties *previously omitted*, and limited the power of such assessors to "*three years arrears of taxes.*" See chapter 3413 of the Laws of Florida of 1883, section 26 thereof, which is as follows:

"Assessment of land previously omitted. If any assessor when making his assessments, shall discover that any land

in his county was omitted in the assessment-roll of either or of all of the three previous years and was then liable to taxation, he shall in addition to the assessment of such land for that year, assess the same separately for such year or years as it may have been so omitted, at the just value thereof in such year, noting distinctly the year when such omission occurred; and such assessment shall have the same force and effect as it would have had if made in the year the same was omitted and taxes shall be levied and collected thereon in like manner and together with the taxes of the year in which the assessment is made; but no land shall be assessed for more than three years' arrears of taxes, and all land shall be subject to such taxes omitted, to be assessed into whosesoever hands they may come."

It was not contended by counsel for plaintiff in error, in the courts of the State of Florida, that this provision as to assessment by tax assessors had any relation or application to railroad properties. On the contrary, it was not the province or in the power of such tax assessors to assess railroad property during the years 1879, 1880, and 1881. It was the duty of the comptroller of the State of Florida. (See sections 45, 46, pages 30 and 31, Session Acts of the State of Florida, A. D. 1879, chapter 3039.) These sections are as follows:

"SECTION 45. That the president and secretary or superintendent or manager of any railroad company whose track or road-bed or any part thereof is in this State shall annually, on or before the second Monday in July, return to the comptroller of the State under their oaths the total length and value of such roads and lines including rights of way, road-bed, side track and main track in this State and the total length and value thereof as in each county, city and incorporated town in this State; they shall also make return of the number and value of all their locomotive engines, passenger, freight, platform, construction and other cars and appurtenances, and the value thereof shall be apportioned by the comptroller *pro rata* to each mile of main track, and the controller shall notify the assessor of each county through which such railroad runs of the number of miles of track and the value thereof and the

proportion of value of personal property taxable in their respective counties, and to such values thus apportioned the assessor shall add the value of all other real property, together with all fixtures, machinery, tools, and other property within their respective counties; and upon the value thus ascertained, taxes shall be assessed the same as upon the property of individuals, and any agent of such company is authorized to pay such taxes to the collector and retain the amount out of any money in his possession belonging to such road. The president, agent, secretary, manager, treasurer, and superintendent of each railroad company, which or whose property under the laws of this State, is taxable upon or according to its income or net income shall in each year before the first Monday in July, make return to the controller and tax assessor under oath of the amount of its income or net income for the tax year, and all such returns shall be sworn to by the treasurer and one other of such officers or agents, and in case such return is not made, the officers or agent aforesaid shall be guilty of felony and shall be fined not exceeding $1,000, or be imprisoned in the State prison not more than three years and all railroad companies or property so taxable shall be taxed at ½ of 1 % of the net income and shall be so assessed by the assessor; provided however that ½ of 1 % of such income will exceed the rate of taxation imposed upon other property, that then such railroad companies shall be taxed at the rate provided for other property.

"SECTION 46. That if any railroad company shall be in the hands of the receiver or other officer, such receiver or other officer shall make the returns required by this act; and should any railroad company or its officer fail to make the returns required by this act to the controller on or before the second Monday in July, annually, the controller shall proceed to ascertain the values herein required, from the best information he can conveniently obtain and add thereto 100 % as a penalty, and apportion the same among the several counties, cities and incorporated towns through which said roads run in the manner herein provided."

And, besides, it was agreed by counsel for the State, and the plaintiff in error herein, in the supreme court of Florida, that the provision as to the tax assessors assessing for "three

years of arrears of taxes" *had no application to railroad properties.* (See pages 237, 238 of the record herein.) The opinion of the supreme court of Florida states on said pages as follows:

"The property sought to be taxed in this case is, by the law of this State, real estate (McClellan's Digest, sec. 30, p. 286, chapter 3099, Laws of Florida, act of 1879, sec. 2, p. 17)."

"Under our laws as they existed prior to the Revised Statutes, there was no lien upon such property for such taxes, until fixed by an assessment for the same (Spratt *vs.* Price, 18 Florida, 289, text 301 *et seq.;* L'Engle *vs.* Florida Central & Western R. R. Co., 21 Florida, 353). The only exception to this rule is that provided in various revenue acts in effect, that assessors might assess real estate which had escaped taxation for any of the preceding years not exceeding three, and that such lands should be liable for such back taxes in whosesoever hands they might come. *Both parties agree that this provision is not applicable to the present case.*" (Italics supplied).

So it is not correctly stated in brief for plaintiff in error, on page 37, that "taxes could only be assessed against such properties as had been omitted from assessment for the three years next preceding the date of levying the assessment." Nor is it correct, as further stated in said brief for plaintiff in error, on page 37:

"So it was that the three-year limitation on the taxing power of the State, was a valuable element which entered into the terms of every contract made with respect to such properties."

Such statements in the brief for plaintiff in error are incorrect statements of the terms, and effect, and meaning of the statutes of the State of Florida, relating to the assessment of these railroad properties. The supreme court of Florida treated the statute, as to tax assessors, assessing lands for "three years' arrears of taxes," *as inapplicable to railroad*

properties. The statement in the opinion of the supreme court of the State of Florida (*supra*) is a judicial declaration of the agreement of counsel, in the argument before it, and is binding upon counsel for plaintiff in error, and declares authoritatively the terms and meaning of the tax statutes of the State of Florida existing during the years 1879, 1880, and 1881.

II.

ARGUMENT ON THE MERITS.

Plaintiff in error, by its counsel, abandoned in their brief (p. 10) and in the outset of their oral argument the relief sought in the original bill as to exemption of lines of railroad from taxation under the eighteenth section of the internal improvement act (chap. 610, Laws of Florida, approved January 6, 1855), for the continuing period of thirty-five years from and after the completion of each of said lines of road; and plaintiff in error, by counsel, upon the argument also abandoned a second object sought in the original bill, namely, to recover the sum of $140,812.47 paid by the Florida Railway and Navigation Company in the year 1885 for taxes alleged to have been illegally assessed against it for the years 1881, 1882, 1883, and 1884. These contentions are also abandoned by plaintiff in error, first paragraph on page 10 of brief. The brief sets out the contention, in the next paragraph of said page, of the whole relief sought, in the following language:

"The whole relief sought in this court is to obtain a reversal of the decree of the State supreme court in so far as it reversed the decree of the circuit court enjoining the sale of complainant's lines of railroad for the taxes assessed for the years 1879, 1880, and 1881, such taxes amounting to $96,181.69."

And upon page 41 of brief for plaintiff in error, the real question, in its own behalf, is thus stated:

"The real question in this case is, what title did W. B. Cutting and his assignees take by virtue of their purchase at the foreclosure sale? From the authorities above cited it seems to be a logical deduction that they took whatever title the trustee in the deed of trust possessed. They were subrogated to all the rights of the bondholders and their title under the foreclosure sale related back to the condition of affairs at the date of the deed of trust, namely, July 1, 1884, the title so acquired cut out any subsequent liens which the State might have sought to impress upon the properties by the act of 1885."

But we have seen that the legislature of the State of Florida placed upon its public records, in 1881, by its joint resolution, three years before said date of July 1, 1884, the notice to the world that the lines of railroad which were afterward assessed under the act of 1885, should be made to pay its proper proportion of taxes to the support of the State government, and such assessment was made only three years back from the date of the joint resolution. This public action of the legislature of the State of Florida was embodied in the joint resolution of 1881, set out in full in the preceding pages of this brief. The supreme court of Florida, in its first decision contained in the record in this case upon the original bill, *held as a question of fact* that those persons constituting the Florida Railway and Navigation Company were the same persons, in identity and interest, as those who held and acquired title to these lines of road at judicial sale in 1879, *and were not innocent purchasers of these lines of railroad, for value.* The supreme court of Florida looked into the titles and charters of the various companies, claiming to own these lines of railroad from 1879 to 1884, and held as a *matter of fact* that the Florida Railway and Navigation Company was not an innocent purchaser for value of said properties. *This finding of fact by the supreme court* of Florida this court *will not review.*

The plaintiff in error here, taking those properties long years afterwards, in 1889, took with full notice of the statute of 1885, directing an assessment upon these lines of road, and with full notice of the joint resolution of the legislature of Florida, passed in 1881, *three years before the organization* of the Florida Railway and Navigation Company, and passed *in the last of the three years* 1879, 1880, *and* 1881, *for which these lines of railroad were assessed for taxes.*

It is impossible, and contrary to the first principles of fairness, and of law, that the plaintiff in error here should, upon such a statement of its case, defeat the State of Florida in the collection of the taxes assessed upon these lines of road in 1885. The constitution of the State of Florida, adopted in 1868, provided that the property *of all corporations organized or thereafter to be organized* in the State of Florida should be *subject to taxation*, excepting educational and benevolent corporations. These lines of road were liable to taxation for the years 1879, 1880, and 1881, but they were not so assessed until the passage of the statute of 1885.

The authorities are conclusive upon the right of the State to pass a law *retrospective in character*, and providing for the assessment and collection of taxes *for years in which property had escaped assessment and taxation.* Such legislation *is general legislation*, not contrary to the Constitution of the United States, nor any law made in pursuance thereof, and such statute of 1885 passed by the legislature of Florida was not contrary to any provisions of the State constitution, but directly in accordance with its provisions. Hence this court will not, and cannot, review *a decision of the supreme court of the State, upholding and enforcing such general legislation.* In Carpenter *et al. vs.* Commonwealth, 17 Howard, p. 456, it is said:

"This court has no authority to revise the act, of Pennsylvania, upon any grounds of justice, policy, or consistency to its own constitution. These are concluded by the decision of the public authorities of the State."

In Watson *et al. vs.* Mercer, 8 Peters, p. 88, it is said:

"As to the first point, it is clear that this court has no right to pronounce an act of the legislature void, as contrary to the Constitution of the United States, from the mere fact that it divests, antecedent, vested rights of property. The Constitution of the United States does not prohibit the States from passing retrospective laws generally; but only *ex post facto* laws."

In the dissenting opinion of Mr. Chief Justice Taylor, of the supreme court of Florida, on page 262 of the record, next to the last paragraph, the statute of 1885 is termed "an *ex post facto* statute."

This is a misnomer, as to the nature and character of the statute of 1885. *Ex post facto* statutes relate to criminal statutes, imposing penalties. Statutes civil in their nature, operating upon matters of the past, are in law known as retroactive statutes, or retrospective statutes. The statute of the State of Florida of 1885 is of the latter character, and one competent for the legislature of Florida to pass. In Albee and Bundy *vs.* May, 2 Paine, 74, it is said:

"That the law of Vermont now in question is a retrospective law, cannot be doubted. It impairs vested rights acquired under existing laws; it attaches a new disability in respect to transactions already passed and creates new liabilities. But it is not repugnant to any provisions in the Constitution of the United States, or of the State of Vermont; and this is the sole ground upon which I rest my opinion."

In support of the right of the State of Florida to pass the statute of 1885, we cite further the cases of The State, Bonney *vs.* Collector of Bridgewater, 31 N. J. L., 133; Stockdale *vs.* Insurance Companies, 20 Wall., 323; *In re* Short's Estate, 16 Pa., 63; Calder *vs.* Bull, 3 Dallas, 386; Black, Constitution Prohibition, sections 170 and 172; Bay *vs.* Gage, 36 Barber, 447. In its opinion on the original bill, page 237 of the record herein, the supreme court of Florida say:

"All property in a State ought to bear its just burden of public taxation and there can be no doubt because it is well established by authority, that if property lawfully liable thereto, escapes taxation for any one or more years it is competent for the legislature to provide for the collection of such taxes in arrears."

"Perry and Hale Counties *vs.* Selma, Marion and Memphis R. R. Co., 65 Ala., 391; Perry County *vs.* Selma, Marion and Memphis R. R. Co. (and other cases), 58 Ala., 546; Tallman *vs.* City of Janesville, 17 Wis., 71; N. C. R. R. Co. *vs.* Commissioners of Allemance, 82 N. C., 259, and Burrows on Taxation, 483.

These authorities fully sustain the power of the State of Florida, through its legislative department exercising the taxing power of the State, to pass the statute of 1885, assessing lines of railroad company for years past in which they were liable for taxation, but as to which they had escaped assessment and taxation.

Again plaintiff in error, on page 43 of its brief, assails the act of 1885, assessing taxes upon its lines of road for the years 1879, 1880, and 1881, upon the ground that other real properties of large value in the various counties, through which these lines of railroad ran, had been improperly omitted from assessment for taxes, during the same years, and yet the law of 1885 did not attempt to secure a just valuation and assessment of these other classes of property so escaping taxation. Hence it is contended, on page 45 of the brief herein of plaintiff in error, that the act of 1885, is a clear and hostile discrimination against it, and obnoxious to the constitutional prohibition as to inequality of taxation; but it will be seen, by even a casual inspection of the cases cited on pages 44 and 45 of plaintiff's brief to support said contention, that the decisions in such cases do not support plaintiff's contention, because the facts involved in such cases were entirely different in nature and character from the facts involved in the record in this case. These decisions have no application to the facts of this case. We adopt, in op-

position to plaintiff's contention upon this point, the language of the supreme court of Florida on page 243 of the record herein, and concluding on page 244 of said record. We are quite willing to subscribe to the doctrine laid down by Mr. Justice Field, in the case cited at the bottom of page 44 of plaintiff's brief, and we submit that *the definition of uniformity*, given in that case by the learned judge is correct, in which he defines it "to mean that taxes must be levied according to some fixed rate or rule of apportionment, so that all persons shall pay a like amount on *similar kinds of property of the same value.*"

The act of 1885 is aimed at any and all railroads, and only assesses them for the same amount that would have been done in those years.

In conclusion upon this point of the brief, we submit that plaintiff in error is here contending against the operation of a State law that is not inimical to the Constitution of the United States, or to any law passed in pursuance thereof, and not inimical to the constitution of the State of Florida.

Plaintiff is seeking to set aside and reverse the *decision of the State court* upon a matter *of general law within the State of Florida.* This it is not competent for this court to do. The decisions of this court seem clear upon that point. In N. O. Water Works Co. *vs.* Louisiana Sugar Refining Company, 125 U. S., p. 18, it is held therein that the constitutional provision that declares that any State shall not pass a law impairing the obligations of a contract is aimed at the *legislative power of a State and not at the decisions of its courts;* and in Knox *vs.* Exchange Bank, 12 Wall., p. 379, it is held that this court is not authorized to review the judgments of State courts because their judgments refused to give effect to "*valid contracts* or because those judgments in *their effect impair the obligations of contracts;*" and in Delmas *vs.* Insurance Company, 14 Wallace, p. 661, it is held by this court that if the State court declares a contract valid or void upon the general principles by which the courts determine

whether a consideration is good or bad on *principles of public policy*, then the decision is one that this court is not authorized to review; and in De Saussure *vs.* Gailliard, 127 U. S., p. 216, it is held that the decision of the State court "that the action of the plaintiff could not be sustained according to the meaning of the provisions of the statute under which it was brought" was conclusive upon this court.

The Federal question alleged to be involved in that case was ignored by this court on the ground that the judgment of the State court rested and was sustained upon a question *independent of the Federal question and capable of sustaining the judgment*, and in McKenna *vs.* Simpson, 129 U. S., p. 506, it is held by this court that:

"The decision of the State court in this case as to what should be deemed a fraudulent conveyance and as to the application of the evidence in reaching that decision presents no Federal question."

And in Bacon *vs.* Texas, 163 U. S., p. 207, these positions are reviewed and fully sustained. We refer again upon this point to the authorities cited in the brief to dismiss the writ of error.

ARGUMENT ON MOTION TO DISMISS WRIT OF ERROR.

Upon this branch of the case we refer to the authorities set out in the first brief on the motion to dismiss writ of error, and to that portion of the brief lately filed upon the merits, which also discusses the motion to dismiss the writ of error, and in conclusion we quote from Thorington *vs.* Montgomery, 157 U. S., 490, in which this court says:

"As to this matter, the Supreme Court held that there was nothing which the court could refuse; that no ruling was shown to have been had or asked on motion in April, 1890, although the case was continued; and that an application made October 16, 1890, was addressed to the court's discretion and could not be revised. This decision *upon a*

matter of practice under the State procedure, did not draw in question any right complainant had under the Constitution, or laws of the United States. It affords no basis for the contention that her right to be heard in her own behalf was denied, and we are of the opinion that not only was no Federal question brought to the attention of the State courts, but that none such necessarily arose or was decided."

The opinion of the supreme court of Florida, rendered upon the bill of review and dismissing the same, beginning on page 252 of the record, and ending on page 260, concludes as follows:

"We have carefully examined the evidence and without further special reference to it, state our conclusion that it fails to show that the new matter alleged was not known, or could not by the use of reasonable diligence, have been known to appellee or its agents, in time for use before the hearing of the cause. In the absence of such showing it is impossible to sustain the decree, without going contrary to the well-settled rules of law on the subject. It, therefore, becomes unnecessary to examine further whether the new matter did exist or its character and effect * * * Judgment will accordingly be entered in this court dismissing the bill. Filed June 26, 1900."

The writ of error in this case seeks to examine and revise this decision of the supreme court. The writ of error herein does not seek to revise or examine the decrees rendered by the supreme court of Florida in 1895 and in 1897, which had already become final. The decision of the supreme court of Florida rendered in 1900 does not decide a Federal question, but merely *a question of practice under the procedure of the State of Florida*. The Federal question raised in the original bill was decided, if decided at all, by the final decrees of the supreme court of Florida rendered in 1895 and in 1897. The decrees were final decrees and conclusive in their character. The order in the court below allowing the writ of error herein limits its application to the final decree rendered by the supreme court of Florida in

1900 (R., p. 223). Hence we move to dismiss the writ of error issued herein because the bar arising from the lapse of time has intervened.

AS TO ABATEMENT OF SUIT FOR WANT OF PARTIES.

The attention of the court is called to the remarkable position, assumed in the contention on the part of the plaintiff in error, to the effect that the suit instituted by it has abated by reason of changes in the personnel of comptroller of the State of Florida. What more complete demonstration can be had, of the contention that the course pursued by the plaintiffs in error, is predicated more upon the desire of this corporation to hinder, and delay the State, in the collection of taxes, than upon any merit there may be in the propositions under the guise of which the case has been submitted to this court.

Of the cases cited on this point, that of United States *ex rel vs.* Butterworth, 169 U. S., 600, was a writ of mandamus; and that of Alby Stock Co. *vs.* Smith, 165 U. S., 128, and 166 U. S., 717, were proceedings for mandatory injunctions based, as in writs of mandamus, upon alleged delinquency on the part of the public officer "*personal*" in its nature and "did not involve any charge against the Government whose officers they were."

Neither was there a voluntary submission on the part of the successor in office to the jurisdiction of the court or any waiver of the point, as was done in the case at bar. It will readily be seen that these cases have no application to this. The injunction sought herein was not mandatory, but prohibitive. While directed against the proper officer of the State, it was not personal in its nature. The proper officer of the State is now in court, and it does not lie in the mouth of the complainants to object to the voluntary submission of such proper officer to the jurisdiction of this court for the purpose of bringing to a speedy conclusion whatever there might be of merit in the cause of the plaintiff in error.

Finally

We cite this honorable court to the irrelevant paragraph on page 44 of brief for plaintiff in error, which reads as follows:

"In almost every State today there is observable a determination and a tendency to impose upon corporations much more than their fair share of the burdens of taxation. This is now done sometimes under the pretense of classification, and sometimes as a franchise or license tax. That these taxes are becoming grossly unjust and oppressive cannot be denied."

Guthrie, The Fourteenth Amendment to the Constitution of the United States, p. 120.

The implication and inference sough to be injected into the consideration of this case by that paragraph is *that the State of Florida seeks to spoliate this corporation, plaintiff in error here;* but we submit that this corporation, the plaintiff in error here, seeks to thwart the State of Florida in the collection of its proper revenues for the maintenance of its State government, its public schools, and for the payment of bonds issued by counties in Florida for the construction of portions of the lines of plaintiff's railroad, said bonds issued nearly fifty years ago and still unpaid and a burden upon the people who issued them.

On the motion to advance this case made in February last the following printed affidavits were submitted from the then comptroller and the present superintendent of public instruction of the State of Florida:

"State of Florida, }
"*Leon County.* }

"I, W. N. Sheats, do hereby certify that I am the superintendent of public instruction for the State of Florida, am familiar with the public-school system of said State and have supervision of the public schools thereof, and know

the sources from which revenue is obtained to maintain said schools as well as the annual sums necessary to keep them in successful operation, and furthermore that the school taxes involved in the suit of the Florida Central and Peninsular Railroad Company against William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, now pending in the Supreme Court of the United States, are necessary for the support of the public schools, and the delay in the collection of it is embarrassing the operation and maintenance of said schools.

"Given under my hand and official seal this 14th day of February, A. D. 1901.

"[SEAL.] WM. N. SHEATS,
"*Superintendent of Public Instruction*
"*of the State of Florida.*"

"STATE OF FLORIDA, }
"*Leon County.* }

"I, William H. Reynolds, do hereby certify that I am comptroller of the State of Florida and that the facts stated in the second reason assigned in the foregoing motion (as to the amount of taxes assessed) for advancing said case are true, that the State of Florida and various counties will be greatly benefited by the collection of said taxes and that the counties of Leon, Jefferson, Madison, Baker, and Bradford have now outstanding and unpaid county bonds varying in each county in amount from about six thousand dollars to thirty-five thousand dollars issued in aid of construction of the railroad to which the said Florida Central and Peninsular Railroad Company is the successor and upon which bonds annual interest at six per cent. is paid, and part of the amount involved in said sum of $96,181.69 will go to the payment of principal and interest on said bonds.

"Given under my hand and official seal this 14th day of February, A. D. 1901.

"[SEAL.] "WM. H. REYNOLDS,
Comptroller of the State of Florida."

It is suggested on page 42 of the brief for plaintiff in error as follows:

"If the act of 1885 and the assessments for the years 1879–1881 thereunder be held to be valid, and the taxes so as-

sessed declared to be a lien against the property, even in the hands of a *bona fide* purchaser, what bar would there be to the passage of further acts by the legislature providing for the assessment and collection of taxes upon these properties for the years from 1868 to 1879, for which years no taxes have been collected? If such course be pursued, what of value would there be left to the bondholders or the purchasers at the foreclosure sales?"

We answer, that the State of Florida, under the decision of 1895, of its supreme court, embraced in the record herein, is concluded against such an attempt by the fact that as to *any further assessment behind the years 1879, 1880 .1881*, the plaintiff in error is now, under such decision, *a purchaser for value.*

WM. B. LAMAR,
Attorney General of Florida.
GEO. H. LAMAR,
Counsel for Defendants in Error.